* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ BAIL APPLICATION NO.71/2007

% Date of Decision : 17th of August, 2007

\# SATPAL ..... Petitioner,
! Through : Mr. K.B. Andley, Sr. Adv.
with Mr. M.L. Yadav, Adv.

versus

$ STATE OF DELHI ..... Respondent,
^ Through : Mr. M.N. Dudeja, Adv.

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **B.N. CHATURVEDI, J.**

1. The petitioner/accused seeks his release on bail under Section 439 Cr.P.C in a case FIR No.33/2006 under Section 308/302/147/148/149/506/120-B IPC PS R.K. Puram, New Delhi.

2. Material facts relevant for decision of

instant petition are thus :

On 17th January, 2006 on an information regarding a quarrel at Moti Lal Nehru College being received at Police Post Nanakpura the police reached the spot but by that time the injured Som Veer had already been removed to Safdarjung Hospital. The police officer concerned reached the Safdarjung Hospital but since Som Veer, injured was declared by the doctor concerned as unfit to make a statement and no eye witness of incident was available, on the basis of a report by the police officer concerned a case FIR No.33/2006 under Section 308 IPC was registered. Pursuant to registration of FIR another police officer, who was entrusted with investigation, went to the hospital where he met another injured namely Jitender Kumar Shokeen. He recorded his statement. Injured Jitender Kumar Shokeen was one of the students of Moti Lal Nehru College. He told that in the

last local college elections which was contested by him as well as one Prashant, he and Prashant had won the election while the petitioner, who was one of the rival candidates, had lost. Jitender Kumar Shokeen and Prashant belonged to a group of students known as Najafgarh group while the petitioner was from another group called as Bharthal group. On account of his defeat in the election, it is alleged, the petitioner and his co- accused associated with Bharthal group had turned hostile to Jitender Kumar Shokeen and his supporters of Najafgarh group.

3. On 12th January, 2006 a quarrel took place between some of the students belonging to the said groups which aggravated the hostility between the two groups.

4. On 17th January, 2006 at about 1.00 p.m. while Jitender Kumar Shokeen and other members of Najafgarh Group were standing near the gate of Moti Lal Nehru College, the petitioner

accompanied by his co-accused Karambir, Subhash @ Bhalla, Hawa Singh, Yogesh Kumar @ Labada, pradeep, Ravinder Singh, Satender @ Bhondu, Anil Kumar and others, belonging to Bharthal group gathered in front of the college gate. They were armed with Dandas and Balli pieces. Evincing their aggressive posture, all of them rushed inside the college gate declaring that the Najafgarh group was to be eliminated. The petitioner and his co-accused Karambir caught hold of Jitender Kumar Shokeen at the exhortation of other members of Bharthal group and their co-accused Subhash inflicted a Danda blow on Jitender Kumar Shokeen which landed on left side of his body near waist region. Jitender Kumar Shokeen was somehow able to free himself from the hold of the petitioner and his co-accused and succeeded in running away from there. Apprehending attack other members of the Najafgarh group also started running away

from there. Jitender Kumar Shokeen took shelter in a room for photocopying while others of his group in a pump house. However, Som Veer, deceased, who was still running away towards college ground, was chased by the petitioner and his co-accused and eventually surrounded by them. On instigation of their co-accused, the petitioner and his co-accused Satender @ Bhondu caught hold of Som Veer from both the sides while others kept on surrounding him so that he could not manage to run away. On being exhorted Karambir, co-accused inflicted a heavy Danda/Balli blow on the head of Som Veer. As a result of Danda blow while Som Veer was falling down, the petitioner also inflicted another Danda blow on his person followed by a further Danda blow by co-accused Ravinder after Som Veer had fallen to the ground. The petitioner and his co-accused then left the spot but not before ascertaining that Som Veer

was dead. Som Veer later, succumbed to his head injury at Safdarjung Hospital.

5. Learned Senior counsel for the petitioner argued that the fatal blow on the head of Som Veer deceased was allegedly caused by co-accused Karambir and the petitioner had simply caught hold of the deceased while his co-accused Karambir inflicted fatal blow on his head. He contended that the Danda blow allegedly inflicted by the petitioner while the deceased was in the process of falling to the ground after sustaining head injury, did not account for death of Som Veer. In the facts and circumstances of the case, argued the learned Senior counsel, the petitioner cannot be held liable for committing murder of Som Veer with the aid of Section 34 IPC. He in support of his plea sought to rely upon two decisions of the Supreme Court in Tehal Singh & Ors. Vs. State of Punjab, **AIR 1979 SC 1347** and Ramashish Yadav & Ors. Vs. State of Bihar; **1999**

(2) JCC (SC) 471. Another argument was that the petitioner being a student of the college his presence within the precincts of his college could not be taken to make him a member of alleged unlawful assembly. He contended that it were rather the deceased and others, who were outsiders being not the students of the college. The learned Senior counsel for the petitioner pointed out that co-accused Pradeep Kumar facing more or less similar allegations has already been granted bail by this court vide order dated 14th November, 2006 while two other co-accused namely Ravinder and Yogesh have been granted bail by the trial court. It was pleaded that the investigation has been completed and charge sheet is already filed and thus further custody of the petitioner is no longer required. It was submitted that the petitioner being a 20 year old young man and a student of BA (IInd year) deserves to be released on bail.

6. On behalf of the State, opposing the bail application, it was contended by learned Addl. P.P. that from the facts of the case as also the statements of the witnesses, the petitioner was one of those who had played an active role in commission of crimes complained of. It was contended that even if the petitioner is shown to have had not inflicted the fatal blow on the head of the deceased Som Veer, he would still be equally liable for committing his murder as he shared common intention with his co-accused Karambir and others to kill Som Veer. To lend assurance to his plea in this regard learned Addl. P.P. referred to decisions of the Supreme Court in Lalai @ Dindoo & Anr. Vs. State of U.P.; **AIR 1974 SC 2118**, Krishnan & Anr. Vs. State Rep. by Inspector of Police; **2003 Crl.L.J. 3705** and Mangu Khan & Ors. Vs. State of Rajasthan; **JT 2005 (2) SC 575**, Ramanand Yadav Vs. Prabhu Nath Jha & Ors.; **2004 Crl.L.J. 640**, Parasa Raja

Manikyala Rao Vs. State of A.P.; **Crl.L.R. 2004 (1) 184** and Prem Vs. Daula & Ors.; **AIR 1997 SC 715**.

7. In the context of bail order dated 14th January, 2006 of this court in respect of co-accused Pradeep Kumar, learned Addl. P.P. pointed out that he was granted bail noticing that no specific role had been ascribed to him which could be said to have accounted for Som Veer's death and that the only allegation was of general exhortation by the group in common. He contended that the role of the petitioner being much different from his co-accused Pradeep he cannot plead for bail on parity. It was pointed out by learned Addl. P.P. that after commission of crime the petitioner evaded his arrest and remained absconding before he was eventually arrested on 10th March, 2006 on proceedings under Section 82 Cr.P.C. being initiated against him. Looking at his past conduct, it was argued,

in case of his release on bail there is reasonable apprehension of his not making himself available for trial, apart from his trying to tamper with evidence by pressurizing and influencing the eye witnesses.

8. It is noticed that though the charge sheet appears to have been filed under Sections 308/302/147/148/149/506/120-B IPC, the learned Trial Court vide its order dated 30th March, 2007 found the petitioner and his co-accused liable to be charged under Sections 148/323/34 IPC and 302/34 IPC only. The learned Trial Judge while directing the charges to be framed, as aforesaid, held that Section 149 IPC was not attracted to the case and it was rather Section 34 IPC which was applicable. Whether in the facts and circumstances of the case and the evidence collected during the investigation, the said offences were committed by the petitioner and his co-accused in prosecution of common

object of an unlawful assembly or in furtherance of common intention, in view of said order on charge being passed by the learned Trial Court, it would not be proper to comment on this aspect of the case while disposing of instant bail petition. No doubt the petitioner happens to be a student of the college where the incident took place and his presence simplicitor could not amount to make him a member of an unlawful assembly but where the petitioner is shown to have joined his co-accused to assault the deceased in a concerted manner resulting into his death, his status as a student of the college cannot be pleaded to save him from being proceeded for commission of such murder. Further, mere fact that the deceased was an outsider and not a student of that college could not be a ground justifying fatal assault on him by the petitioner and his co-accused.

9. Co-accused Pradeep Kumar as also

Ravinder and Yogesh appear to have been granted bail keeping in view that no specific role was ascribed to them in the commission of crime and there was only an allegation of general exhortation by them to kill Som Veer. The role played by the petitioner is clearly distinguishable and thus his plea for bail on parity cannot be granted. Further, as pointed out by learned Addl. P.P., the petitioner remained absconding for about three months after commission of crime and could be arrested only on proceedings under Section 82 Cr.P.C. being initiated against him. Such a conduct on his part raises reasonable apprehension that in case of his release on bail he may flee from justice and may not make himself available for trial. This apart, the possibility of his tampering with evidence by intimidating, pressurizing or otherwise influencing the eye witnesses is also not beyond the realm possibility. His mere age and being a

student alone cannot justify his release on bail keeping in view the gravity of offence allegedly committed by him and his co-accused.

10. Thus finding no good ground for bail, the petition is dismissed.

11. Nothing stated herein tantamounts to expression of opinion on merits of the case.

(B.N.CHATURVEDI)
JUDGE

August 17, 2007
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